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**Let Freedom Ring in Post-Olympics Beijing:
Enforceability Strategies for China's National Human
Rights Action Plan Found in the Intersections between
Asian History, Culture, and International Law**

Alissa N. Baier

Chinese high school sophomore Chen Le stated forcefully, "I would rather be forced out of school, than deny my faith."¹

On October 20, 2009, Chen's school in China's Xinjiang Province officially expelled him for signing a document confirming his identity as a Christian.² The Official Notice of Expulsion³ reads as follows:

Decision on Chen Le, Student of Our [Huashan Middle] School:

Chen Le, a 2nd grader from Class 8 of Senior High School, was found by Bazhou Public Security Agency and other related agencies to have engaged in Christian gatherings. His school was notified that it should educate the student and persuade him to mend his ways. However, efforts from the class advisor and some leaders from the school in educating him have all failed and this student persists in his belief that he should not renounce his Christian belief. He can't promise that he will not believe in Christianity or attend Christian activities. He also claims that if the school wants him to write a statement of self-criticism and self-introspection of examining his error of attending religious activities as a high school student, he would rather not attend this school. Given the above situation, this school advises him to transfer to other related schools.

*High School Division
Huashan Middle School
2nd Agricultural Division of Xinjiang Production and
Construction Corps*

Chen Le says that he does not regret signing this document, but Chen's expulsion subsequently bars him from taking China's mandatory college entrance exam and will effectively deprive him of future education.⁴

As a Christian student myself who has lived in China for an extended period of my life, I can relate to the reason why Chen made this incredibly controversial, life-altering decision—a decision he would not have faced if it weren't for his country's oppression political practices. However, I also recognize the universality of Chen's situation, that even for those with no personal faith, no experience living in China, and seemingly nothing to lose; the lack of religious freedom is nonetheless problematic for its inextricable ties to freedom of speech, association, legal representation, and property, among other basic rights that all humans share, regardless of religious belief or lack thereof.

Another iconic example of such religious and political oppression can be found in the experiences of Gao Zhisheng, a Christian human rights attorney who is presently missing, after being captured and imprisoned by the Chinese for more than two years.⁵ He was an unyielding advocate for constitutional reform and justice in Chinese courts, arguing landmark cases to defend property owners alongside political and religious dissenters, and he was even nominated for the Nobel Peace Prize in 2008 and 2010. As a result of having written an open letter to the US Congress, exposing the brutality of the Communist Party and their persecution of house church Christians, Gao was seized by a dozen police officers on February 4, 2009.⁶ Fourteen months later, he reemerged and held interviews with the Associated Press and other news organizations which recanted stories of his brutal torture.⁷ However, two weeks later, Gao disappeared again, and his family and friends have not heard from him since.⁸ Chinese police agencies either declined to comment or insist that they do not know of Gao's whereabouts.⁹ In their efforts to obtain his release, both ChinaAid and Voice of the Martyrs (VOM) continue to distribute a "Free Gao" petition worldwide, intending that signed copies will be given to the Chinese

Embassy in Washington, DC, the US State Department, as well as international organizations such as the United Nations and the European Union.¹⁰

As frustrating and horrific as these stories might be, they are not surprising to those with any previous knowledge of China's religious climate. Not just Protestant and Catholic Christians, but also Muslim minorities living in rural Xinjiang Province, Tibetan Buddhists, the Falun Gong, and other religious groups have experienced persecution under the Chinese Communist Party's rule.¹¹ The only surprise lies in the fact that, in 2009, China put forth its own National Human Rights Action Plan, which includes five provisions specific to the protection of religious freedom.¹² Yet, persecution of individuals, churches, and organizations of all faiths are still occurring, and the international legal community is puzzled as to how to act in response.¹³

However noble its efforts, Western-style diplomacy historically has not proven successful in changing China's policies and procedures. Given the Communist country's past failures to promote rule-of-law, and its current treatment of citizens like Chen Le and Gao Zhisheng, it is doubtful that traditional international law mechanisms such as petitions and treaties will open doors for Chinese religious freedom. Although China's own Action Plan addresses these important issues, and its willingness to draft and publish it "deserves praise,"¹⁴ the Action Plan cannot be considered a blueprint for Chinese human rights reform or a reasonable tool for accountability. It has been more than two years now since the Action Plan's release, and the Chinese government's failures to adequately implement its key commitments regarding religious freedom, among other human rights, have "rendered it largely a series of unfulfilled promises."¹⁵

Regardless of past experience and present commentary, the Action Plan's addition to China's legal landscape still introduces an opportunity for increased religious freedom. In order for the Action Plan to gain its greatest impact, two parties must play particular roles. First, the United States and

the international community, as each seeks practical methods of enforceability, should keep in mind China's unique cultural framework for viewing law and society, as well as China's aversion to Western-style human rights impositions.¹⁶ Second, Chinese religious followers of all faiths should strive to prove themselves as beneficial citizens whose humanitarian work and core beliefs are essential to promoting the common good of their country.

In this article, I look at the religious freedom provisions of China's Action Plan and offer concrete solutions for enforceability, given China's complex historical and cultural context. Part I provides a brief history of China's religious climate, culminating with several key events from the past few years. From the 2008 Summer Olympic Games to the Sichuan earthquake to the many important political anniversaries of 2009, much has happened by the end of the last decade, making an up-to-date account of China's human rights record and fresh legal analysis necessary in order to understand the potential effectiveness of the Action Plan. Part II includes a basic description of three primary cultural attitudes—rule-of-law versus rule-of-man, individual versus collective well-being, and legal versus relational contract formation—that provide a framework for Chinese legal thought. This is necessary to shed light on not only why China drafted its Action Plan but also to illuminate why enforceability of such a document will not come easily.

Given the historical and cultural framework provided in the first half of this article, Part III discusses China's prevailing law regarding religious human rights, including its national constitution, key international human rights treaties, as well as the new Action Plan. Part IV analyzes China's successes and failures in implementing its international obligations and how the Action Plan will likely follow suit. Finally, Part V suggests methodologies, the best-equipped players, and a time frame for enforcing the Action Plan and holding China accountable on human rights as a whole, but more specifically, encouraging religious freedom.¹⁷

I. CHINA'S LONG STRUGGLE WITH RELIGION

Before any American political leader, human rights lawyer, or even a legally knowledgeable layperson attempts to grapple with the religious provisions of China's Action Plan, he or she should educate themselves on China's evolution of attitudes towards religion, not only in the context of its current Communist government, but also considering the rich history that China has accumulated for thousands of years.

A. Confucianist Roots

Antireligious attitudes have a long tradition in China, dating back to the fourth century BC, when many intellectuals and politicians equated religion with superstition. Chinese legal scholar Thomas Heberer stated, "China's supreme power has always endeavored to keep religious activity under control so as not to jeopardize the unity and stability of the state."¹⁸ In fact, many of the same tactics used by ancient Chinese dynasties to repress religious believers—restricting the number of religions allowed within the country, prohibiting private construction of temples, punishing those who worship outside officially recognized channels, etc.—are still employed today by China's Communist Party.¹⁹

Confucianism and Daoism—the first spiritual movements to spread throughout dynastic China—were also political and philosophical in nature.²⁰ Unlike Judeo-Christian religions of the Western world, Confucian philosophy emphasized earthly existence, the structure of society, and filial responsibilities while maintaining a bias against "superstition."²¹ These values would continue to permeate Chinese culture and thought, influencing the way that outside religions were accepted or denied entrance into China.²²

China's ruling elite was primarily composed of Confucianists who developed the "Ministry of Rites," an intricate system of religious restrictions for maintaining political control.²³ Several departments of this Ministry existed to impose a monopoly over all religious matters, efficiently

suppressing various religious denominations and the development of heretical movements.²⁴ For example, laws during the Qing dynasty (1644–1912) restricted the number of monks and nuns who could engage in religious activities, prohibited the private construction of temples, punished anyone with “eighty strokes of the stick [who made a] private appeal to Heaven” by worshipping outside officially recognized channels, and even called for decapitation of anyone who created or distributed heretical religious literature.²⁵ These measures may seem drastic, but China’s present-day control mechanisms for organized religion are not far removed in their tactics.

B. The Entrance of Foreign Religions

As the first foreign faiths were introduced to China, many Chinese leaders feared that both religious domination and political imperialism would follow and compromise the existence of the Chinese state. As Buddhism (the first of many religions) was introduced in the first century by Indian merchants, government officials continued to enact restrictions on its religious practices for the purpose of state sovereignty.²⁶ By the seventh century, Buddhists had arrived in Tibet, and by the ninth century, a majority of Tibetans had become followers of a new form of Tantric Buddhism.²⁷

Silk Road merchants also introduced Islam into China’s western-most region, Xinjiang Province, somewhere around the eighth century.²⁸ The predominant minority group living in this province, the Uighurs, devoutly continue today in their Muslim faith despite its conflicts with Chinese Communism.²⁹

Christianity, the largest religious group in China today, was first introduced by the Nestorian Church during the early Tang Dynasty (AD 618 –AD 907). Meanwhile, Western political forces arrived at the same time. The Catholic Church followed in the fourteenth century, and the Jesuits put down permanent roots in the late sixteenth century.³⁰ Because Western

imperialism and Christianity arrived in China within the same time frame, the two have been forever linked in iron-clad thought by the Chinese.³¹

Following China's loss in the Second Opium War of 1858, Christianity continued to be seen as an invading religion. Among many other concessions that followed China's defeat, foreign missionaries were granted the right to share their faith in China under the Treaty of Tianjin.³² Frustrations with foreign religion and economic influence exploded further in the Boxer Rebellion, between 1898 and 1900, in which the "Society of Righteous and Harmonious Fists" (known as the "Boxers" in English)³³ attacked mission compounds across Northern China, besieged foreign embassies in Beijing, and openly persecuted Christians across the country under the slogan "Support the Qing, destroy the foreign" (Fu Qing Mie Yang, 扶清灭洋).³⁴ On September 7, 1901, the Qing dynasty was compelled to sign the "Boxer Protocol," a peace agreement between China, the United States, and seven other European nations who had similar goals to colonize Asia. In addition to the payments of funds, the Protocol ordered the execution of high-ranking officials linked to the outbreak of violence against Christians or those found guilty for killing Westerners in China.³⁵

C. Religion in Post-Communist China

The year 1949 brought Mao Zedong's famous Communist revolution and marked a turning point for the entire country—not just politically and economically, but spiritually too—as the government further controlled religion for the purpose of eventually eliminating it.³⁶ Historically, religion had been subordinated to the demands of a Confucian society and its power structure, but after 1949, religion also became subservient to the needs of the socialist state.³⁷ Even more so than nationalism, religion is seen as a natural enemy to Marxism-Leninism, whose "doctrine of dialectic materialism is in direct opposition to all religious teachings."³⁸ However, Chinese leaders, both at the time of the revolution and today, have not advocated the immediate abolition of religious practice.³⁹ Instead, the

Communist Party has taken a gradual approach, stressing that religion is an historical product, which will disappear only when socioeconomic conditions have “improved” to the extent that people no longer need it.⁴⁰ Religion is tolerated, but not encouraged; it is protected to the extent that it does not obstruct China’s progress along the socialist road.⁴¹

For example, an internal party document stated the Communist Party’s strategy regarding religion:

The basic starting point and firm foundation for our handling of the religious question . . . lies in our desire to unite the mass of believers and non-believers and enable them to center all their will and strength on the common goal of building a modernized, powerful socialist state.⁴²

Given these elements of Marxist-Leninist ideology, the emergence of a Communist state in 1949 created alarming administrative barriers to the Chinese peoples’ expression of faith. As the party’s Central Committee formulated its policy towards religion, a Religious Affairs Bureau (RAB) was implemented to oversee eight “National Associations,” each of which maintained control over a specific religious denomination.⁴³ One government document states that the National Associations “serve as a bridge by which the Party and government unite with and educate religious personages.”⁴⁴ Yet, control is the bigger issue—“[a]ll patriotic religious organizations must accept the leadership of the Party.”⁴⁵

Following the 1949 Revolution, Mao forced Protestant and Anglican Christians to dissolve their denominations in order to join their official Association.⁴⁶ Specific to Protestant denominations, the Three-Self Patriotic Movement (TSPM) became the RAB’s main tool for “directing the concerns” of Christians (or more honestly put by Reverend Lin Xiangao, a Baptist Minister who spent more than twenty years in prison for his beliefs, the TSPM is “a tool used by the Government to destroy Christianity”).⁴⁷ The new three “self” Chinese churches stood for “Self-Supporting,” “Self-Governing,” and “Self-Propagating,” which recognizes the autonomy of

Chinese Christianity aside from any foreign influence, including former “imperialist” connections.⁴⁸ According to the TSPM, the church’s primary goal should be to submit to the Communist Party, not a higher spiritual being.⁴⁹ This is particularly problematic for monotheistic, Judeo-Christian churches, as they are forced to recognize two heads—both God and the Communist Party.

Aside from this issue of control over church leadership is also that of controlling the church’s teaching and doctrine. Under the TSPM, all religious messages must be made compatible with socialism.⁵⁰ For example, TSPM pastors are discouraged from preaching on Jesus’ divinity, miracles, or His resurrection because such issues are seen as a threat to China’s grasp of power over its citizens.⁵¹ In addition to the TSPM’s control of leadership and doctrine, the TSPM decides which buildings can be used for church services, which pastors can preach, and what areas can be traveled to for purposes of evangelism.⁵² Although it varies from church to church, pastors are often required to self-censor their sermons in order to keep in line with the government’s ideas of patriotism.⁵³ Church activities are restricted to Sunday services, with no midweek meetings, Bible studies, or gatherings in private homes.⁵⁴ No minors under the age of eighteen may be evangelized or baptized.⁵⁵ Surveillance is ordered for all religious leaders, and detailed records are kept on specific individuals and churches.⁵⁶ Those who refused to register with the RAB or submit to its requirements were publicly accused and imprisoned.⁵⁷

China’s religious climate grew worse during the Cultural Revolution of 1966–1976, when all religious groups were banned and even the TSPM vanished.⁵⁸ Alongside intellectuals, teachers, and those of skilled professions, the nation’s clergy and church members were executed or sent to labor camps, or “swept away” as “ghosts and monsters.”⁵⁹ But in 1977, China’s policies became more pragmatic under the leadership of Deng Xiaoping, and Christians were released from prison as a demonstration to the Western world of China’s new policies regarding religious freedom and

human rights issues.⁶⁰ In the 1980s, the government allocated 140 million yuan (over \$20 million) to restore religious facilities destroyed during the Cultural Revolution, and established forty-six religious schools.⁶¹ The TSPM returned to power in 1980 under the leadership of Ding Guangxun, a Nanjing Bishop and former Anglican, who must still report all affairs to the government.⁶²

Despite China's historical and political biases against spiritual faith, religion as a whole is currently flourishing in China and in need of more protection. Chinese Christians are among one of the fastest growing religious groups in the world, likely because those who were once immersed in the political fervor of Mao's revolution are now searching for something deeper to trust in.⁶³

As a reaction to the party's restrictions, perhaps viewed by some as a rebellion or even a revolution, a huge network of unregistered churches has sprung up in secrecy over the last several decades.⁶⁴ Known to the outside world as "house churches" or the "underground church," these Christians have one main reason for refusing to register with the RAB: they recognize only one head of the Church, Jesus Christ. The TSPM estimates that China currently has sixteen million Protestants and three million Catholics.⁶⁵ But in 2006, Ye Xiaowen, Director of China's State Administration for Religious Affairs (SARA), claimed that, "these numbers of illegal worshippers comprise only 80 percent of all Chinese Christians."⁶⁶ Behind closed doors, the total number, including house church Christians, is closer to 50–100 million, as many are "meeting in private homes, caves, and fields illegally, defying the ban on unregistered churches."⁶⁷

D. Religion in Twenty-First Century China

Although Chinese religious believers may enjoy more religious freedom today in the twenty-first century than during the Boxer Rebellion or the Cultural Revolution, the Communist government remains in strict control

over all religious activity, making the Action Plan's religious provision unprecedented in its intention to promote more freedom.

Particularly in this past decade, as China continued to rise in its global involvement, the international community has put more pressure on the party to loosen its grasp on religion and improve its human rights record as a whole.⁶⁸ Foreign nations have constantly criticized China's policies and demanded change as a prerequisite to China's global leadership in two particular events: Beijing's acceptance by the Olympic Committee to host the 2008 Summer Games, and the celebration of several important political anniversaries in the year 2009, including the Tiananmen Square massacre of 1989.⁶⁹ Both events illuminate current international views of China's religious rights situation, and they serve as building blocks upon which the country's current Action Plan was erected.

1. Beijing's Bid to Host the 2008 Olympic Games

When China won its bid to host the 2008 Olympic Games, part of the bargain included promotion of rights for Chinese citizens,⁷⁰ identical to many of those that now appear in the Action Plan. The Organizing Committee for the Olympic Games issued its own "Beijing Action Plan," which laid out these principles and promises.⁷¹ In 2003, Human Rights in China (HRIC), a nongovernmental organization (NGO) whose mission it is to advance the institutional protection of human rights in China, launched a special campaign entitled "Incorporating Responsibility 2008" to promote compliance with Beijing's international human rights promises before and after the Olympics.⁷² In 2005, the HRIC issued an initial assessment report titled, *Promises, Promises*, detailing improvements that had been made in the first two years and what remained to be accomplished before 2008.⁷³ Although many of the reforms that the HRIC emphasized were environmental, freedom of religious expression was also a priority within the campaign.⁷⁴

Particularly suspect among Beijing's promises was its vow to guarantee security during the Games, which HRIC campaign leaders feared could lead to the abuse of security systems during and after the Olympic Games to track those labeled as "dissidents" and often includes religious believers. "Armed with new security technology acquired for the Olympics, China will have an even greater capacity to monitor and restrict individual rights beyond 2008."⁷⁵ The Olympics organizing committee spent approximately \$300 million on security, and after 2008, China's budget was expected to grow at an annual rate of at least 20 percent.⁷⁶

As feared, religious persecution only increased throughout the Olympic Games.⁷⁷ It has become a common pattern that whenever the Chinese government holds an important international event, serious suppression is implemented to maintain the appearance of stability. The nonprofit organization ChinaAid Association predicted in its 2007 Persecution Report that the Chinese government in 2008 would "fool the domestic and the international communities with more skill, diplomatic means, and public opinion, while continuing its religious and political persecution and persecution of human rights so that they can create an image that they have made progress in the human rights condition in China."⁷⁸ It also predicted that the government would continue cracking down more on the religious, political, economic, and international political forces that challenge the party's ideology and rule.⁷⁹ Only in this manner can they best "purify and consolidate the Han chauvinist ideology integrated from 'Communist politics and Confucian ethics,' based on atheism and nationalism."⁸⁰

ChinaAid's 2008 Persecution Report showed an increase in religious persecution cases, finding that 2,027 Chinese people were persecuted that year, up from 788 persons in 2007.⁸¹ The total number of people arrested was 764; thirty-five people were sentenced to imprisonment, and sixty people were abused—up 71.4 percent from 2007.⁸²

2. Political Anniversaries of 2009

China put forth its Action Plan in the spring of 2009, following several key political events, including Beijing's Summer Olympic Games, the worldwide reaction to Gao Zhisheng's disappearance, and before the upcoming United Nations Human Rights Council (UNHRC) periodic review of China.⁸³ There is no doubt that it was a strategic move. Several important anniversaries in China's political history would occur in 2009, each of which ironically presented even more opportunity for stability-seeking through religious oppression, and the UNHRC would be taking notice.⁸⁴ Keeping these anniversaries in mind, ChinaAid's Annual Persecution Report for 2009 opened with the following statement:

The Chinese government and the whole world watched events in China unfold throughout the year 2009 with anxiety. For 2009 was the year of the People's Republic of China's 60th anniversary and an opportunity to show the world her national influence and military power, as seen in the celebration in Tiananmen Square. The event divided the Chinese into two psychological camps: those who are nationalists, who celebrated with pride and excitement, and those longing for democracy, with much disappointment. The year 2009 gave no sign from the government that human rights would improve in China, and the society continues to be pervaded by corruption.⁸⁵

Beginning June 4, 2009—the twentieth anniversary of the Tiananmen Square Massacre⁸⁶—and leading up to October 1, 2009, the sixty-year anniversary of the People's Republic of China, plenty of extra precautions were taken to “safeguard the people” and give an appearance of control and stability before the international community. Several churches considered to be “dangerous” were shut down before both anniversaries, but on a more visible level, Beijing was transformed into a locality of heightened security and censorship.⁸⁷

Having lived in the capital city myself at this time of year, I traveled down to the Square just before sunset to see things with my own eyes. All

those who wished to enter the Square were met with airport-like X-ray machines and metal detectors at the subway station exit. I knew that journalists were being turned away, but I had no idea that the personal journal in my purse would appear suspicious. Very little had been written between its brown, recycled-paper pages, and the cover was decorated with vintage Maoist propaganda, but I was still asked to show my passport and visa. (Apparently anyone carrying a notebook or recording device was not allowed to enter unless they could prove that their purpose did not include international reporting.) After analyzing my tourist visa and temporary student card to Beijing University, an official reluctantly released me into the Square.

At first glance, one would assume only that the typical number of green-shirted guards were present in Tiananmen Square. However, my American friend who accompanied me pointed out several young men in their twenties who were meandering alone, grasping a single bottle of water behind their backs as they stayed a standard six feet away from their street-clothed-clones. It did not become completely evident to me that these were “plainclothes guards” dotting the Square until I saw a few give away their identities by marching with their officially dressed peers.

Most civilians were gathered in front of the flagpole, directly across the street from the Forbidden City’s entrance, where they waited until sunset for the nightly flag-lowering ceremony. Entire families—from babies and school-age children to their mothers, fathers, and elderly grandparents—sat on the stone-tiled ground, camped out with their strollers and blankets, while the sky turned shades of orange and purple. As I observed their commonplace behavior, I wondered if they had any idea what today was. Did they know what happened twenty years ago? Did “June 4” ring in their minds as it did for the rest of the world? Did they even realize that swarms of guards were present behind them for a very specific reason?

Even if they did not know, every foreigner in Beijing did, and very few risked coming to the Square that day. In fact, everyone I knew advised me

against it. My friend and I bumped into only one other non-Chinese couple during our ninety-minute stroll.

Now years after the last Olympic torch was extinguished, the world still wonders when, or even if, a satisfactory level of human rights will ever be achieved in China. If China's accession to the World Trade Organization (WTO), the Olympic Games, and the recent political anniversaries were not enough to bring more concrete measures of religious freedom, then what will? Specific pressures must be applied on the Chinese government in order for change to come about, and as unclear as those pressures and changes might be (or who exactly should bring them), the Action Plan presents an opportunity for the world to do it.

II. THE CHINESE STANCE ON RULE-OF-LAW, COMMUNITY, AND CONTRACTS

Before a correct recognition and possible enforcement of the Action Plan can occur, the international community must realize that its attempts at diplomatic negotiations for religious freedom are wrought with cultural misunderstanding. For those of us Americans who were born in a nation founded on freedom of religion—a place where people still fight at all costs to “let freedom ring” and where personal rights are protected with fierceness—it is difficult for us to conceptualize China's lack of religiosity and strict regulation. The country's fierce relationship between government and religion is evident not only from its extensive history (as described in the above section) but also evident in the context of China's long-standing cultural ideas. Before any Chinese law can be analyzed and evaluated for its enforceability, three particular cultural concepts—rule-of-law versus rule-of-man, individual versus collective well-being, and legal versus relational contract formation—must be recognized. These cultural attitudes reveal several key differences between what an American and a Chinese legal scholar would recommend regarding the Action Plan.

A. Rule-of-Law Versus Rule-of-Man

First, China's rule-of-man philosophy has generally clashed against the ideals of the rule-of-law, both in regards to religion and other human rights, because the plain language of such written human rights agreements does not hold the same significance in China as a leader's individual authority.

Beginning from my own American culture and legal system as a familiar launching point, it is well known that the United States upholds a rule-of-law system, as articulated by Chief Justice Marshall in *Madison v. Marbury*.⁸⁸ "The President of the United States is . . . with certain important political powers, in the exercise of which he is to use his own discretion," but regardless, is "the officer of the law," and "amenable to the laws for his conduct; and cannot at his discretion sport away the vested rights of others."⁸⁹ Rule-of-law requires that publicly promulgated laws be laid down in advance, that fair enforcement procedures be made available, and that law is supreme over officials as well as ordinary citizens. A "shared vision of justice" comes from the belief that "law should be the principal organizing framework of government and society."⁹⁰

On the contrary, law's role in Chinese affairs has traditionally been regarded with overt hostility. China finds more value in a rule-of-man, which allows political exceptions to the general rules for the sake of "saving face."⁹¹ Whereas the Western world has traditionally equated law with moral authority, "mandates from heaven," and deistic origin; the Chinese people associate law with despotic imperial rulers who manipulated it to impose arbitrary commands, duties, and punishments on the population.⁹² Ancient Chinese law had everything to do with rulers' discretionary benefits and little to do with providing benefits to citizens in their private spheres of life. Thus, the rule-of-law never obtained legitimacy in China because it was seen as the "perfect fly"—an infallible but irresponsible bureaucracy that could not be trusted.⁹³ The rule-of-man, however, is illustrated as the "imperfect soldier"—fallible at times, but a strong and responsible administrator.⁹⁴ Even today, official law in China operates in a

vertical direction, “from the state upon the individual,” rather than on a horizontal plane, like most democracies, which operate “directly between two individuals” with rule-of-law as their guiding light.⁹⁵

Other values, such as the primacy of relationships and the avoidance of conflict (which the Chinese believe to be far superior and more personal compared to cold, hard law), traditionally governed the arrangement and performance of public and private affairs.⁹⁶ For example, the concept of “saving face” has been argued to uphold Chinese rule-of-man instead of completely converting to rule-of-law.⁹⁷ To “save face” in Asian culture is to be concerned with one’s personal appearance and reputation, as well as that of one’s neighbors and elders.⁹⁸ Emphasis is given to courtesy, respect, and following the rules so as not to cause embarrassment upon anyone else.⁹⁹ Under considerations of “face,” a double layer of negotiation occurs. The law is treated in both a public and a private manner, and concern is given to how legal decisions will make both parties feel internally, as well as appear externally to society.¹⁰⁰

Applying this “rule-of-law versus rule-of-man” dichotomy to a religious freedom example, Ye Xiaowen of SARA describes how China’s intentions to expand control over religion through legal instruments are, in actuality, an expansion of man-made discretion, giving that power to bureaucracy instead of the people: “Regulating religious affairs according to law means that the government administers and oversees the enforcement of the laws, regulations and policies concerning religion The purpose of managing religious affairs by law is to safeguard legitimate religion, curb illegal cults, resist infiltration, and crack down on crime.”¹⁰¹ According to Magda Hornemann of Forum 18 News Service, “Put simply, this represents not the ‘rule of law’ but the continuation of ‘rule of man’—or, even more appropriately, the ‘rule of the Communist Party’—but through legal means.”¹⁰² At least for now, the Communist state “continues to treat laws and regulations as instruments to further its rule of man,” and subsequently, its control over religion.¹⁰³

In this way, the Chinese prefer face-saving “rule-of-man politics” for its tolerance, affection, and relational aspects. Rule-of-man gives more leeway for people to “live and let live” than “heartless” rule-of-law governance.¹⁰⁴ Non-Chinese who adhere to rule-of-law politics deem face-saving mechanisms as too malleable and capable of breeding the same corruption that made the Chinese suspicious of law in the first place.¹⁰⁵ Yet, no matter the standards used by the outside world to grade China’s government, within China, the evaluation of good government and officials is never done by rules in legal documents. Instead, it is done by the “[e]thics in the people’s hearts.”¹⁰⁶

B. Individualistic Versus Collective Well-Being

China’s cultural emphasis on the collective well-being, instead of the individual, is another contradiction with American political ideals, and future international recognition of the Action Plan must take it into account. If religion is to succeed in China, it must be viewed as a unifying strength for the common good, not as an individual liberty.

The collective ideal has long been a driving force behind China’s Marxist ideology and current Communist government.¹⁰⁷ Unlike the United States, their country’s conception of law was never seen as a source of rights and entitlements that citizens might invoke for protection from government,¹⁰⁸ especially not for religious believers. Group interests often prevail over personal interests.¹⁰⁹ Countless Chinese legal decisions that the United States finds questionable—from the One Child Policy¹¹⁰ to the mandatory retirement age of sixty¹¹¹—point back to the country’s culture of prioritizing greater society over the interests of the individual. Thus, in order for the Action Plan to succeed as applied to issues of spiritual faith, “the individual rights of the religious believer will always be subordinate to the interests of society as a whole.”¹¹²

C. Legal Versus Relational Contract Formation

Third, China's relational view of contractual formation and enforceability adds little hope for strict enforcement of the religious provisions within China's new Action Plan. Again, using American law as a starting point of familiarity, most educated contracting parties tend to include a detailed recitation of each side's rights and obligations, both actual and contingent.¹¹³ These contracts are broad in scope and insurance-like in their articulation of consequences for all possible outcomes.¹¹⁴ All expectations are defined by the contract; if a matter is not addressed, there is no obligation or entitlement.¹¹⁵

Although written contracts are used in China, Chinese parties do not regulate their relationships by self-initiated legal standards. Instead, they seek a pattern of continued association, making adjustments as needed in order to be responsive to particular considerations that the law, even in its most sweeping attempts at flexibility, might ignore.¹¹⁶ A traditional Asian contract anticipates, rather than defines, the ensuing relationship; it memorializes a relationship's beginning instead of concluding a business deal.¹¹⁷ In fact, "assigning firm consequences to conduct or events long before the conduct or events occur (if at all) is counterintuitive" to traditional Asian cultural practices, where mutual adjustment and accommodation is to be expected.¹¹⁸

Situational and circumstantial considerations tend to prevail over contractual terms, and custom and usage win out over written statements of law.¹¹⁹ For example, "from a traditional Asian perspective, a 'confer in good faith' or 'friendly negotiation' clause represents an executory contractual promise no less substantive in content than a price, payment, or delivery term."¹²⁰ In addition, avoiding or disregarding a contract is not a matter of moral significance for most Asians. As described above, because rule-of-law is generally associated with the arbitrary whims of disdainful rulers (instead of the deistic origins that American and Europeans hold it to), breaking a contract is more understandable than blameworthy.¹²¹

In order to promote reform that would be best accepted by the Chinese themselves, these three pearls of cultural wisdom within the Chinese legal framework—rule-of-man, emphasis on the collective well-being, and relational contracting—must be applied to our understanding of China’s stance on freedom of religion and human rights overall, as well as its experience with international law.

III. PREVAILING LAW AND TREATIES REGARDING RELIGIOUS RIGHTS

Given the historical and cultural contexts placed before us, a description of China’s current law, beginning with its constitution and including various international treaties, also helps to place the Action Plan in greater legal perspective.

A. The PRC Constitution

China’s primary source of law regarding religious freedom is its own constitution.¹²² Article 36 describes a basic freedom of belief: “No state organ, public organization or individual may compel citizens to believe in, or not believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion.”¹²³

Although such permissiveness is professed, conditions of discrimination still exist. For instance, within the governing Communist Party members cannot admit to following any sort of religion.¹²⁴ Yet, the party doesn’t seem to see its own irony—one internal government document stated “the fact that our Party proclaims and implements a policy of freedom of religious belief does not, of course, mean that the Communist Party members can freely believe in religion. . . . There can be no doubt at all that they must be . . . atheists.”¹²⁵ The government is more lenient to party members of ethnic minorities, but under the sentiment that party members should help them to “gradually shake off the fetters of a religious ideology.”¹²⁶

Also, the constitution extends protection only to “normal religious activities.” Although not explicitly defined within the document itself, the definition of “normal” was discussed and circularly “defined” at a 1988 Chinese conference on religion and socialism: “The so-called ‘normal religious activities’ . . . refer to the religious activities other than the religious activities that are abnormal and illegal.”¹²⁷ Given the Marxist-Leninist stance on religion as a whole, it is not surprising to hear that the conference stated, “It is in itself abnormal to put forward the term ‘normal religious activities.’”¹²⁸

Given this allocation of “normal” activities, Article 36 also states, “No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the state.”¹²⁹ Given that China’s number one priority is national unity and harmony, together with upholding the importance of a collective society, this regulation follows traditional Chinese values of giving precedence to public order over individual religious freedom.

Furthermore, other articles of the constitution permit additional derogation from religious rights. Article 51 states that “the exercise of citizens . . . of their rights may not infringe upon the interests of the state, of society, and of the collective.”¹³⁰ Articles 52, 53, and 54 further elaborate that the Chinese citizen’s duty is to “safeguard the unity of the country and the unity of all its nationalities . . . [observe] public order and respect social ethics . . . and to refrain from acts detrimental to the security, honor, and interests of the motherland.”¹³¹

Finally, the Four Cardinal Principles included within the 1980 constitution’s preamble form the “backbone” of the document, while speaking negatively towards religious freedom.¹³² These principles exhort officials to “adhere to the socialist road, support the people’s dictatorship, follow the leadership of the Communist Party, and take Marxism-Leninism-Mao Zedong Thought as the guiding ideology.”¹³³ Both the vagueness and elasticity of these principles provide further obstacles for religious people,

as they are frequently invoked to restrain the expansion of any civil and political rights.¹³⁴

Most importantly, perhaps, is the provision in the PRC Constitution that “religious bodies and religious affairs are not subject to any foreign domination.”¹³⁵ Once again, China’s suspicion of foreign influence is illustrated, this time by statute. As applied through its plain language, no non-Chinese missionaries or evangelistic organizations are allowed inside the nation. Church members are not allowed contact with overseas church groups—including the Vatican—and are forbidden to read Christian literature, watch Christian multimedia, or listen to Christian radio broadcasts that come from a foreign source.¹³⁶

If religion is to thrive under these Four Cardinal Principles, it must be under the leadership of Chinese nationals alone, without any contact with religious believers from outside nations. At first glance, this may not seem problematic to Chinese religious freedom; yet, the Catholic faith is based around the Pope’s leadership from Vatican City.¹³⁷ Restricting Catholics from access to their central source of authority makes religious practice extremely difficult, if not impossible. Also, the Christian faith, in general, believes in worldwide evangelism under Jesus’ call to “go and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit, and teaching them to obey everything I have commanded you.”¹³⁸ For the Chinese government to order the severance of all faith-based international ties is in direct conflict with a Christian’s ability to obey their leaders and share their faith with others.

Beyond the textual difficulties of China’s Constitution, the lack of importance placed on rule-of-law has allowed the constant modification, revision, addition, and cancellation of various laws at the slightest whim of the Communist Party, without any democratic check on its actions. Since 1949, four constitutions have been promulgated, each serving more the role of “mere suggestion” rather than a binding charter.¹³⁹ Also, the party’s monopoly over the judiciary makes it impossible for any independent

constitutional interpretation.¹⁴⁰ China's government is under no pressure to respect its citizens' liberties, as no entity can enforce the constitution against its high political authority. The most recent constitution, promulgated in 1982, gives citizens no right to appeal for alleged violations of their rights by the bureaucracy.¹⁴¹

B. International Human Rights Conventions and Treaties

In addition to China's own constitution, the country has signed and ratified six of nine core human rights treaties.¹⁴² Religious freedom is described more specifically within three particular treaty bodies—the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (DEIDRB). However, the People's Republic of China has not ratified any of these three treaties.¹⁴³

The largest problem that Chinese religious believers face when attempting to uphold their rights under these few international treaties is that these documents, even when ratified, are nonbinding unless China's own domestic laws include the same provisions. Although the United Nations' human rights regime has generally equated ratification with incorporation into domestic law, China specifically, given its views on rule-of-law, may not. For this reason, China's Action Plan is an important step, because it takes legal provisions that the international community had once imposed, and incorporates them into Chinese domestic law.

1. The Universal Declaration of Human Rights (UDHR)

On September 21, 1948, during the third session of the United Nations' General Assembly, the UDHR was adopted as the first declaration within the UN Charter's "bill of rights."¹⁴⁴ Its principle function was to "promote universal respect for, and observance of, human rights" in a way that went

beyond the general provisions of human rights in national constitutions and other narrow treaties.¹⁴⁵

Specifically regarding religion, Article 18 of the UDHR includes “freedom to change [one’s] religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance.”¹⁴⁶ This broad protection for religious freedom is qualified by Article 29, which, when taken into consideration with a legal Chinese interpretation, allows for certain limitations to meet “the just requirements of morality, public order, and the general welfare in a democratic society.”¹⁴⁷

This Article 29 restriction “potentially licenses a government to prohibit any religious system whose moral tenets diverge from majoritarian values.”¹⁴⁸ If interpreted too broadly, such “‘morality restrictions’ can legitimize discrimination against minority views and ultimately undermine the stated goals of the Declaration.”¹⁴⁹ China has already proven this to be true by its treatment of Tibetan Buddhists, Uighur Muslims, and other religious and ethnic minority groups.¹⁵⁰ In response, US officials have condemned these abuses while supporting positive trends within the country and encouraging the Chinese government to address policies that restrict Tibetan Buddhist religion.¹⁵¹ However, under Article 29, China is allowed to justify its violations of minority religious rights.¹⁵²

2. International Covenant on Civil and Political Rights (ICCPR)

Another document within the International Bill of Rights, the ICCPR, was adopted by the General Assembly on December 16, 1966.¹⁵³ When the General Assembly adopted the UDHR, they requested that the Commission on Human Rights (Commission) prepare, as a matter of priority, a covenant of human rights and implementation measures. In 1951, the Commission drafted fourteen articles on economic, social, and cultural rights,¹⁵⁴ yet, after a long debate at its sixth session, the General Assembly requested the Commission “to draft two Covenants on Human Rights . . . one to contain

civil and political rights and the other to contain economic, social and cultural rights.”¹⁵⁵

China’s obligations under the ICCPR are less clear, because the state has signed but not ratified the convention.¹⁵⁶ Under international law, the act of signature means that China must refrain from any actions that would run counter to the objective and purpose of the treaty until it has “made its final intentions known.”¹⁵⁷ However, despite its non-ratification, China may be legally bound by the treaty if the rights contained within it codify international customary law, which all states must uphold as *jus cogens*.

The ICCPR’s Article 26 echoes the prohibition of religious discrimination found in Article 2 of the UDHR, and both documents’ Article 18 mirror each other by granting all individuals the right to have or adopt a religion or belief of their choice.¹⁵⁸ Article 27 explicitly contains additional protections for minority religious believers by asserting that “in those States in which religious minorities exist, persons belonging to such minorities shall not be denied the right . . . to profess and practice their own religion.”¹⁵⁹ Article 27’s lack of restrictions implies that governments have less leeway under this provision than the UDHR’s Article 18, which allows exceptions for “morality restrictions.”¹⁶⁰

Jerome Cohen, a senior fellow at the Council on Foreign Relations in New York, believes that China’s ratification of the ICCPR would have more of a profound effect on the country’s political, legal, and social systems than even its accession to the WTO in 2001.¹⁶¹ Yet, hopes of Chinese ratification prior to the Beijing Olympics Games have passed and fallen.¹⁶² In Cohen’s address to the Congressional-Executive Commission on China Human Rights and the Rule of Law in China, Cohen stated that the Chinese Communist Party has “decided to meet the specter of social instability with harsh repression rather than legislative innovation.”¹⁶³

3. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (DEIDRB)

Following the same presumptions as the UDHR and the ICCPR, the DEIDRB was adopted by the General Assembly in 1981. In the DEIDRB's preamble, its drafters stated that "religion or belief, for one who professes either, is one of the fundamental elements in his [or her] conception of life" and it "should be fully respected and guaranteed" under documents such as the UDHR, the ICCPR, and the Action Plan.¹⁶⁴ Yet, unlike those documents, it authorizes derogation only from the manifestation of religion, not from freedom of religious belief.¹⁶⁵

As the most specific of international human rights treaties in its enunciation of religious freedom, Article 6 of the DEIDRB allows all peoples:

1. To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
2. To establish and maintain appropriate charitable or humanitarian institutions;
3. To make, acquire, and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
4. To write, issue, and disseminate relevant publications in these areas;
5. To teach a religion or belief in places suitable for these purposes;
6. To solicit and receive voluntary financial and other contributions from individuals and institutions;
7. To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
8. To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief; and
9. To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

Although the DEIDRB is the most all-encompassing treaty of religious rights, it is unclear what legal force it possesses and exactly what obligations its signatories undertake.¹⁶⁶ On one hand, international declarations are generally considered nonbinding; however, when the General Assembly unanimously adopted the DEIDRB, it included strong language requiring all signatories “to enact or rescind” any of their legislation that fostered discrimination or restricted religious freedom.¹⁶⁷ China has neither signed this treaty, nor has it been historically enthusiastic about incorporating international treaty provisions into its domestic law.¹⁶⁸ Therefore, any effort toward enforcing the Action Plan using the DEIDRB’s specific standards would be useless.

In summary, although the signature and ratification of any international treaty is usually seen as a crucial step for implementing these religious rights, given China’s distrust of the rule-of-law, legal scholars must question if ratification would serve only as a symbolic gesture of goodwill and not an actual promise to be held to any standard. Unfortunately, all three of these treaties’ vague protections hardly seem enforceable against the Chinese government. More creative solutions—solutions that take China’s unique history and culture into account—should be crafted to effectively supplement the Action Plan.

IV. THE ACTION PLAN AND ITS APPLICATION TO THE CURRENT STATE OF RELIGION IN CHINA

China’s latest piece of human rights law is its own Action Plan, signed on Monday, April 13, 2009, and reaffirming that “China has enshrined respect for and protection of human rights in its Constitution as a major principle of government, and has taken effective measure to promote the cause.”¹⁶⁹ Using the Action Plan, the government has reinforced President Hu Jintao’s comments on religion, taken from his 2007 speech to the 17th CCP National People’s Congress (NPC).¹⁷⁰ The fifty-four page document is divided into five sections—Economic, Social and Cultural Rights; Civil and Political

Rights; Rights and Interests of Ethnic Minorities, Women, Children, Elderly People and the Disabled; Education in Human Rights; and Performing International Human Rights Duties, and Conducting Exchanges and Cooperation in the Field of International Human Rights—each of which appear to be named after sections of the UDHR and other various international treaties.”¹⁷¹

China’s most recent stance on freedom of religious belief is included within the Action Plan’s fourth section, titled *Guarantee of Civil and Political Rights*.¹⁷² The section states that “China fully implements the policy of freedom of religious belief, and in accordance with the law, manages religious bodies, venues of religious activities and religious believers.”¹⁷³ The Action Plan does not call for fundamental reforms to the nation’s political system—a system which has historically suppressed religious thought and practice. Instead, it focuses on advancing respect for human rights within existing bureaucracies.¹⁷⁴ In five simple bullet points, China seeks to implement:

1. *Protection of normal religious activities*, “as well as the lawful rights and interests of religious bodies, venues of religious activities and religious believers themselves” in accordance with the law.
2. *Religious laws*, including “Regulations on Religious Affairs” as well as “improve relevant auxiliary regulations” and “relevant local laws and regulations to guarantee freedom of religious belief and citizens.”
3. *Protection from compulsion* “to believe or not believe in any religion, and from any *discrimination* on the grounds of religious belief.”
4. *Respect and protection for ethnic minorities’ religious beliefs and cultural heritage*. This includes a promise to “make necessary investments in the maintenance and reconstruction of temples, mosques, and other religious facilities of historical and cultural value in ethnic-minority areas.”

5. *Full play to the positive role of religious circles in the promotion of social harmony and socioeconomic development.* China also “encourages and supports religious circles to launch social welfare programs, exploring methods and channels for religious groups to better serve society and promote the people’s well-being.”¹⁷⁵

The Action Plan’s first provision repeats much of the same ideas as Article 36 of the PRC Constitution. The vague term “normal religious activities” is retained, although identified slightly different as “lawful” and “in accordance with the law.” What these actual religious activities entail remains undefined and elusive, causing one to wonder whether China’s Action Plan is intended more to enforce preexisting limitations on organized religion rather than loosen them.

This ambiguity is also seen in the Action Plan’s second provision, which points more specifically to China’s preexisting laws, including regulations from its hierarchical RAB organization. As evident from this article’s earlier descriptions of these organizations (especially the TSPM, which oversees Protestant believers), the enforcement of the RAB’s authority through more “Regulations on Religious Affairs,” local laws, and other “auxiliary regulations” has only promoted further oppression.

The third provision, which offers protection from compulsion to believe or not believe in any religion, is not a new step forward either, because Article 36 of the Constitution addresses compulsion, too. In order for China to faithfully uphold this provision, it would require that all political leadership positions and party membership be opened up to citizens of all faiths without discrimination. Without that allowance, all members of government and Chinese nationals in seats of power are automatically compelled to profess only one belief—Communism—which is only a form of atheism.

The fourth provision, likewise, repeats past promises from the DEIDRB regarding ethnic minorities and protection for their religious beliefs and cultural customs. The groups most recognized for experiencing repeated

discrimination and suffering are western China's Xinjiang Uighur Muslims and Tibetan Buddhists.¹⁷⁶ Yet nothing has changed in the state's treatment of these minority groups since the Action Plan has been released.

The fifth and final provision seeks to "give full play to the positive role of religious circles in the promotion of social harmony and socio-economic development." Besides being the only novel promise included within this section of the Action Plan, this fifth regulation is also the most intriguing because it offers a unique avenue for religious freedom by way of self-promotion. Under this regulation, Chinese religious believers are encouraged to launch social welfare programs and explore channels for religious groups to better serve society. Yet, the Government did not indicate whether these statements would apply to unregistered religious groups, like the underground church, which is not affiliated with the RAB.¹⁷⁷ Although possible drawbacks could exist for secret groups such as the underground church, whose identity and safety are of urgent concern, this alternative seems the most hopeful avenue for obtaining real gains in religious freedom under China's Action Plan.

Overall, these five provisions, though doubtful in adding novel ideas to Chinese law or promoting protection for China's religious peoples, can be viewed either as a success, a façade, or a failure in regards to actual enforcement—it all depends on whose eyes one is looking through.

A. Viewing the Action Plan as a Success for Religious Human Rights

The comparison given thus far between China's history, culture, international treaty obligations, and its current Action Plan may seem dreary and stark, but various scholars recognize that a steady light of hope emits from between the Plan's five religious provisions. Si-si Liu, a Hong Kong-based researcher for Amnesty International, claims that the document is "important because it's the first-ever action plan for China, and there are clear goals in areas such as education and pollution."¹⁷⁸ The Plan's short section on religious freedom may not be as concrete in its goals as a UN

declaration, or even incredibly revolutionary, but the Action Plan still represents a step in the right direction.

Perhaps most importantly, the Action Plan (although ambiguously phrased) recognizes and repeats promises found in the Chinese Constitution, in addition to facially incorporating many international treaty protections into China's domestic law. Including such provisions in Chinese domestic law is especially useful where the Chinese assert that the international community is using foreign treaties to infringe on China's sovereignty and illegitimately impose the international community's own norms. China's new self-adopted Action Plan will be easier to enforce than international covenants, which the Chinese may or may not have ratified, given that such agreements are a form of "cultural imperialism."¹⁷⁹ Those international treaties are usually written by non-Chinese drafters, whose ideas fall more into the individualistic, rule-of-law legal realm than the collective and relational rule-of-man Asian model.¹⁸⁰

Others argue that the most positive achievement that this Action Plan has accomplished for religious rights is the mere acknowledgement that China has failed to uphold them. The Action Plan marks "a shift from the Chinese government's traditional posture of criticizing human rights as an imposition of 'Western values' to embracing them as a national goal to be realized through concrete assessment targets."¹⁸¹ Sara Davis, the executive director of Asia Catalyst, a support organization for Chinese human rights groups, stated that, "Five years ago you couldn't even say the words 'human rights' in China, so the government should be commended for uttering the phrase at last."¹⁸²

Yet, as far as Gao Zhisheng and other imprisoned Chinese nationals are concerned, the mere mention of human rights is not the goal. When Gao turned his words into advocacy, he was arrested, detained, and tortured, drawing attention from people around the world.¹⁸³ More is needed to protect Chinese nationals than mere acknowledgment.

Finally, when considering the strengths of the Action Plan, we should not forget that its provisions overcome China's initial cultural hurdles to religious reform. China's acknowledgment of its human rights weaknesses and its willingness to become public about seeking improvement are giant leaps forward. Given the country's fixation with "saving face," this is a brave step that should be applauded, and the international community should come alongside China with encouragement to continue from its starting platform.

B. Potential Weaknesses of the Action Plan

Deciding whether to praise China for its progress or criticize its government for its continued failings is like asking the age-old question of whether the glass is "half-full" or "half-empty." Most scholars say "both," depending on how they are looking at the glass.¹⁸⁴

Joshua Rosenzweig, a research manager for the Dui Hua Foundation, stated that the Action Plan "marks the first time that China will commit to a public strategy on human rights that activists can later use as a score card for progress."¹⁸⁵ However, "without the will to put an end to such abuses, we will see little change . . . Good ideas are not going to be enough. There has to be the will to change. That's always the problem."¹⁸⁶ Human Rights Watch claims that although the Action Plan touches on many important rights issues, it omits some very notable ones, it lacks benchmarks for a meaningful assessment of progress, and its style is "hortatory—asserting accomplishments and admitting some difficulties—but opaque."¹⁸⁷ While these conventions have made great strides in bringing awareness to human rights issues, there are still doubts concerning how well religious freedoms are being installed and upheld.

1. Presenting a Façade that Goes No Deeper

Given China's cultural importance of "saving face," it is a very real possibility that the Action Plan is simply a veneer, presented to the

international community as a goodwill gesture of promoting change. Underneath, it could be grounded by nothing but empty promises. Several instances pointing toward China's need for human rights improvement, as well as moments of political embarrassment within the months before the Action Plan's unveiling, suggest a "face-saving" motive as a primary factor behind its creation. First, Beijing's announcement to create an Action Plan came three months before China was scheduled to undergo a periodic review by the United Nations Human Rights Council.¹⁸⁸ Also, the month before their announcement, in October 2008, China "lost face" when a prestigious European human rights award was given to Hu Jia, a Chinese dissident jailed for speaking out on AIDS issues and environmentalism, despite Beijing's warnings that such a prize would damage international relations.¹⁸⁹

Speaking from this perspective, Rosenzweig stated, "Some of the most serious human rights abuses . . . lie at the doorstep of the Ministry of Public Security. I question how committed they are to implementing this plan Otherwise it's just a symbolic measure."¹⁹⁰ In fact, among the fifty-three government ministries, agencies, academics, and NGOs named to the Action Plan's list of "broad participation," the Ministry of State Security is not among the state organs involved.¹⁹¹

Similarly, Jerome Cohen also told the *L.A. Times* that, "Most international observers who follow human rights in China consider this [Action Plan] mostly eyewash. It would be wonderful if the Chinese government would open up and discuss concrete cases. Human rights watchers want to talk about reality, not principle."¹⁹²

The possibility that China's Action Plan is merely "eyewash" would set a dangerous precedent in international law. If China drafted this Action Plan merely to bolster its public image and has no intention of carrying out its provisions, not only would the Action Plan be rendered void and meaningless, but it could possibly undermine the future of the international human rights regime.¹⁹³ In drafting the Action Plan, China's leaders may

have used rule-of-law rhetoric, but they emphasize that such laws and procedures are not to be applied in a “Western manner.”¹⁹⁴ Chinese leaders want a legal system that “represses the rising tide of social unrest generated by China’s rapid success,” for the sake of “saving face,” instead of a law-based system that fairly processes disputes.¹⁹⁵ Cohen argues that the failure of “high-touted socialist rule-of-law” to meet the Chinese peoples’ needs, together with the “frequent use [of law] as an instrument of repression,” has fueled frustrations that are “being transformed into a right resistance.”¹⁹⁶

Considering China’s “saving face” practices on a more personal level, my most vivid encounter with the concept comes from a tightly-packed subway ride in Beijing. I specifically remember sitting closely to a Chinese woman about my age, with foul breath that smelled like the remnants of her fish-flavored lunch, who asked me from two inches away, “What do you think about China?” She proceeded to tell me her honest thoughts about the city’s preparations for the Olympic Games, its recent architectural transformation, and how Chinese people didn’t like that their *hutongs* and traditional buildings were being destroyed and replaced with skyscrapers.

“Everybody wants Beijing to look like a modern city for the Olympics,” she said, describing how important it was for China to put on a “good face” for their international guests. Later, I found a poem that described her sentiments with uncanny precision:

When you come to the Olympic Games in Beijing, you will see
skyscrapers, spacious streets, modern stadiums and enthusiastic
people.

You will see the truth, but not the whole truth, just as you only see
the tip of an iceberg.

You may not know that the flowers, smiles, harmony and
prosperity are built on a base of grievances, tears, imprisonment,
torture and blood.¹⁹⁷

2. Lack of Enforcement Methodology and Judicial Access

China's Action Plan also lacks power to improve religious freedom because it contains no means for enforcement. In a Western-style democratic system, citizens are familiar with due process laws and an independent judicial system that allow anyone, with proper standing, to have their day in court, and even appeal. China, however, as a civil-law nation with one party and allied courts, employs a much different approach. If any Chinese religious believers possessed the courage to bring a case under the Action Plan, the chances of the judiciary accepting it are slim.

At his address to the US Congressional-Executive Commission, Jerome Cohen stated, "everyone recognizes that, if China is ever to enjoy a genuine rule-of-law, the most fundamental reform required is the development of a fair and independent court system."¹⁹⁸ To those who consider this task, it seems not just daunting, but impossible given China's history with rule-of-law; should it look to Japan, Taiwan, South Korea, and China's other Asian neighbors who "have made great strides in this respect" despite that fact that they share similar elements of China's political culture. Further research regarding how those Asian countries succeeded in establishing a fair and independent judiciary—including where and why China's previous efforts failed—should be given priority by legal scholars as other enforcement mechanisms are simultaneously researched.

3. Lack of Visible Effects on Religious Freedom

Despite the recent implementation of human rights legislation, the law's effects within China and its real-life application has yet to be seen. John Kamm, Director of the Dui Hua Foundation, has stated that some three thousand people are still being sentenced every year for political and religious offenses.¹⁹⁹ Past violations of China's own human rights promises have stemmed from the corruption of political power, China's refusal to recognize rule-of-law, and the judiciary's inability to enforce protections provided under domestic constitutional or statutory legislation.²⁰⁰ Pastors

are still imprisoned, churches and religious institutions must still register, minority groups are still persecuted for their beliefs, and important foreign influences of faith are still outlawed or separated from their Chinese followers.²⁰¹

Beijing lawyer Li Jinsong, an outspoken advocate for some of China's leading dissidents, doubts that the Action Plan will bring substantial progress, because the problem is embedded in China's underlying political systems. "Most problems are connected to corrupt officials, such as the Beijing justice bureau."²⁰² Unless this corruption is removed through social restructuring, the implementation of rule-of-law, and other radical shifts in China's current thought paradigms, Chinese religious people will continue to suffer persecution, regardless of any Action Plan. Neither Chinese domestic law nor international human rights treaties will ever be successfully carried out if this corruption continues. People like Gao Zhisheng have been imprisoned and tortured because of such injustices, and they will remain missing unless change occurs within the societal structures that placed them there.

V. METHODOLOGIES AND ACTORS FOR PROMOTING GREATER RELIGIOUS FREEDOM

I recognize that this article's expansive spread of Chinese history, Asian culture, international treaties, and analysis of the Action Plan's benefits and detriments may cause overwhelming feelings of hopelessness for religious reform in China (as well as difficulty for readers to digest such dense, complex information all at once). In fact, given China's unique cultural approach, many Americans may step back and argue that China should just be left alone to analyze and uphold their own laws. While this viewpoint has its merits, those who advocate it tend to forget that the international community does play an important role in China's reform alongside the grassroots activism of the Chinese themselves. But first, before Americans

and others can come to the table, the hurdle of cultural relativism must be overcome.

Some may argue that the way China treats its religious citizens is its own business and that neither the United States nor any other country has the authority to intervene.²⁰³ Uninvited American judgment would result in a poor exportation of our First Amendment freedoms and the importation of certain priorities that China has never held for itself.²⁰⁴ Instead, international legal scholars should ask themselves, “What worldwide values must be upheld at all costs, regardless of country and culture?” The UDHR succeeds in naming those values, including *jus cogens* principles such as the prevention of torture, alongside the right to education, freedom of association, and religious liberty. Dozens of countries have recognized those principles ratified by the UDHR, yet abuses and atrocities continue to occur worldwide.

Focusing on these internationally regarded standards as applicable to all cultures, it is right for the international community to proceed in seeking a methodology of enforcement regarding China’s Action Plan and a strategy for religious rights improvement. If one thinks that Chinese Christians are striving only for their own form of Christianity and the Chinese nation alone, he or she misunderstands the greater implications of their struggle for religious freedom. Chinese Christians are not suffering for their own sake; they firmly believe that what they suffer is a universal “sacrifice for human dignity and freedom.”²⁰⁵ As Martin Luther King wrote in 1963 in a letter from jail, “Injustice anywhere is a threat to justice everywhere.”²⁰⁶

A. Diplomacy and More Treaty Making

The United States has played an important role in the global pressure to promote religious freedom in China, not only because of the United States’ superpower status, but because it is a nation firmly founded on the principle of religious freedom and the separation of church and state.²⁰⁷

The United States has approached China on all issues of human rights in the way it knows best: diplomacy. In October 2000, Congress created the Congressional-Executive Commission on China with the legislative mandate to monitor China's human rights and the development of the rule-of-law, as well as to submit an annual report to the President and Congress. Also, on June 14, 2005, a Congressional China Caucus was formed to "raise awareness on and serve as a forum of discussion for US-China interests in the US House of Representatives."²⁰⁸ Members of Congress continue to use this body as a vehicle for educating its members on Chinese issues within the context of US interests, assessing trends in China and their effects on the United States, and lobbying for change.²⁰⁹ In addition to this main congressional body, countless other committees have been formed, and the use of both intergovernmental organizations and NGOs alike has been encouraged in order to conduct research and improve Sino-US relations, alongside the US ambassador.²¹⁰

However, improved international relations have not necessarily led to improved religious conditions. In September 2009, Jon Huntsman was appointed US Ambassador to China, and in Congress' welcome letter to the new ambassador, several pressing issues were reported.²¹¹ Leading up to China's sixtieth anniversary in 2009, the government planned a crackdown on six Beijing house churches, although many of these churches "posed no threat to social order."²¹² Members of Congress wrote that "nor should a pending national event be cause or justification for violating the constitutional right of Chinese citizens to fundamental religious freedom."²¹³ The letter directed Ambassador Jon Huntsman to "affirm the US position prioritizing religious freedom, and to publicly state the vital importance of religious freedom to a modern nation, the role of religious freedom to holistic stability and development, and the imperative for people of faith to be allowed to freely worship outside of government establishment."²¹⁴

In order to meet these priorities, common suggestions have been made to further the use of UN declarations and treaties or create a new bilateral treaty between the United States and China. Yet, no matter how hard the United States may try, the Western world is simply not the best actor for negotiating human rights standards with China or holding it accountable for abuses. This is due in large part to the vast cultural differences between the two nations. China rejects American criticism, contending that civil and political rights like free speech or an unfettered press do not matter as much as those in the social and economic realms, such as the rights to be clothed, housed, and fed.²¹⁵ In fact, turning criticism back around at the United States, Beijing publishes its own annual report on American human rights violations that highlights crime, racial discrimination, income disparities, and a democracy that is “manipulated by the rich.”²¹⁶

However, a recent speech to the Congressional-Executive Commission on China Human Rights advocated that “China has never been more open to international cooperation in all fields than today, and the PRC experts, in and out of government, genuinely welcome virtually all opportunities to work with counterparts from abroad.”²¹⁷ Given this open invitation, numerous international organizations, foreign governments, NGOs, charitable foundations, universities, and lawyers’ groups worldwide have helped to launch joint law reform projects in China.²¹⁸ Nevertheless, “China has always gone its own way, and outsiders who have sought to influence its course have had much to be modest about.”²¹⁹

B. Promoting the Action Plan’s Provision Number Five

Instead of relying on outsiders, I would argue that the Chinese themselves, as “insiders,” are the most effective group for applying pressure for change and holding China accountable for its promises for religious freedom. Remember that China’s Communist nation was founded not just by Mao Zedong alone, but it was a “people’s revolution.” The importance of the collective good has forever driven Chinese culture and politics—not

only can this principle be utilized to promote reform and freedom, but it *must* be utilized for success to occur.

Such grassroots mobilization is what drove students to protest at Tiananmen Square, to the point of death, for what they believed in. Dorinda Elliott of *Time* magazine, who marched with students in the 1989 mass demonstrations for democracy, claims that “what’s missing in China today is a sense of idealism . . . there was a spirit of hope of possibility, as young and old talked soldiers out of cracking down on the protests.”²²⁰ If this same idealism could be revived in the religious people of China, the possibilities are endless.

Provision Number Five of the Action Plan opens the door for religious believers of all faiths to rekindle the spirit of revolution and prove themselves as beneficial citizens for China. These individuals must show the possibility that contributing time, finances, service, patriotism, and even their personal religious beliefs can and will make their country a better place. Examples of this methodology are happening already. For example, internal pressure is being increasingly applied from politically oriented bloggers and a growing middle class that demand more human rights.²²¹ Also, after the Sichuan earthquake on May 12, 2008, numerous Chinese believers, including its underground network of house churches, initiated a “large scale mercy mission of rescue and reconstruction projects.”²²² According to the government statistics, out of about one million rescue volunteers, 63 percent were Christians.²²³ These efforts gave house church members the opportunity to become visible through their service and have an influence on the transformation of their country. Unfortunately, however, the Chinese government launched more serious persecution of the House Church Movement that year.²²⁴ This situation illustrates how much of a risk it is for Chinese believers to step out and promote the cause of religious freedom themselves. Many fear the consequences, knowing that one wrong move, one slipped comment to the wrong public official, could put them in the same place as Gao Zhisheng—or worse.

International treaties will have their greatest effect when and where China's national stakeholders—local citizens themselves—have the motive and the means to demand treaty compliance and enforcement.²²⁵ The Action Plan promises greater freedom of religious belief, expression, and nondiscrimination—all significant principles that the local Chinese likely hold more motivation towards obtaining than outsiders who are not directly impacted by the Plan's provisions.

C. When?

The best time frame for the Action Plan's religious reforms to occur is still to be debated. The international community emphasized China's accession to the WTO and China's grant to host the 2008 Olympic Games as turning points for change, yet the new millennium's first decade closed without noticeable improvement. The Olympic Games, a celebratory international event, showcased Beijing and inspired China to clean itself up both environmentally and politically, although arguably more for the sake of "face" than for any actual benefits to Chinese citizenry.

A disaster like the Sichuan earthquake brought the Chinese people to their knees in helplessness and unified the country in service to one another, but religious freedom still did not increase. Yet, this very event is a prime example of how Provision Number Five can be used to its full potential. Just as the Chinese Christian Church, as well as foreign religious groups, promoted themselves by supporting national improvement following the May 2008 disaster, both groups should keep a lookout for more opportunities to prove themselves as valuable, patriotic citizens.

Although greater effects might be achieved by taking advantage of such a terrible disaster, the Chinese people should not wait for a perfect storm (or disaster) like the Sichuan earthquake. There may be no better time than now, and the means by which change is sought is the most important detail to consider. Now more than ever, China has been catapulted into the spotlight as a key actor on the world's stage. In the board room, throughout

sports stadiums, and on the front page of international newspapers, China has quickly taken second place behind the United States—or even surpassed it in some places to become first in global power and influence.²²⁶ Now is the time for the international community to brush up on their knowledge of Chinese history and culture as it forms these global relationships, as well as for Chinese believers to become model citizens that their government finds to be indispensable to the community. Only then can reform can begin. Today, while China is still reveling in the aftermath of the last summer Olympic Games and rebuilding from the aftershocks of the Sichuan earthquake, is an opportune time for shining up China's human rights record in such a way that goes beyond mere "face."

VI. CONCLUSION

China's new Human Rights Action Plan is modest in its claims, yet presents the international community and Chinese citizens alike with ample opportunity to seek long-awaited reform regarding religious freedom.

As reflected in past events such as China's 2001 accession to the WTO, the 2008 Summer Olympic Games, and the most recent political anniversaries of 2009, much emphasis has been placed on convincing China to change its policies, yet little has been directed towards understanding what China itself considers to be its own priorities. Because of China's cultural inclinations toward a more community-oriented, relational legal approach, any attempts at holding the country to a strict rule-of-law when interpreting its Action Plan are not feasible. In fact, if the West tried to mold Chinese legal thought into accepting such a standard, it would only drive China away further. If the transition from relational to legal practice is externally inspired and imposed on China, rather than emerging naturally from its own traditions, then we must "speak in terms of decades, rather than years," before rule-of-law values become pervasive.²²⁷ From an American perspective, asking ambassadors and foreign relations committees to give up pushing rule-of-law philosophies presents quite a

risk, “to the extent that ‘risk’ in the West is perceived as the likelihood of divergence from some precise, preordained expectation or standard of conduct.”²²⁸ But if the United States’ primary goal in improving their cross-cultural relationship with China is the overall success of the relationship, then this risk must be recognized as an essential contribution to the stability of future East-West relations.

More importantly, in order to see the Action Plan’s greatest impact on promoting religious freedom, the Chinese people themselves should interpret Provision Number Five as an invitation to let their lights shine in China as humanitarians and servants to their country. Whether during disasters like the Sichuan earthquake, or throughout events like the Olympic Games, Chinese religious people can promote their own well-being and the reputation of their religion by giving it a role in society through service, financial support, and charitable work.

I realize that this is a risk, especially when so many religious believers have been persecuted, imprisoned, tortured, and even killed. But being “undercover agents for good” is truly the most efficient way to effect change. Chinese religious believers know their country’s history and culture best, which gives them the most experience working within the boundaries of rule-of-man, “saving face” for their neighbors, promoting the collective well-being, and negotiating on a relational level. These are skills unlike those any American citizen, nor any Western politician, has to offer.

WEB LINK: To hear more about the United States’ political stance on China’s current human rights situation, please refer to *Recent Hearings and Roundtables* of the Congressional-Executive Commission on China, specifically those hearings entitled *Political Prisoners in China: Trends and Implications for U.S. Policy* and *Human Rights and the Rule of Law in China*. These hearings occurred on August 3, 2010, and October 7, 2010, respectively, in Room 628 of Dirksen Senate Office Building. However, they are available online at: <http://www.cecc.gov/pages/hearings/2010/20100803/hearingwebcast20100803.php> AND <http://www.cecc.gov/pages/hearings/2009/20091007/hearingwebcast100709.php>. Further updates and webcasts of Commission hearings can be found on the Congressional-Executive Commission on China’s website: <http://www.cecc.gov/index.php?PHPSESSID=b262448fdb3ff9d0eeeb2abe249c5dc5>.

¹ *Christian Minor Expelled From Xinjiang High School for His Faith*, CHINA AID, Oct. 26, 2009, <http://www.chinaaid.org/2009/10/christian-minor-expelled-from-xinjiang.html>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Gao's Story*. CHINA AID, <http://www.freegao.com/01/gaos-story.html> (last visited April 8, 2011).

⁶ *Id.*

⁷ Charles Hutzler, *Missing Chinese Lawyer Told of Abuse*, THE ASSOCIATED PRESS, (January 10, 2011), *available online at* <http://www.chinaaid.org/2011/01/ap-exclusive-missing-chinese-lawyer.html>.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Petition to Free Gao Zhisheng*, CHINA AID, <http://www.freegao.com> (Mar. 6, 2011).

¹¹ *See, e.g.*, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP'T OF STATE, 2009 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM REPORT 2009, CHINA (INCLUDES TIBET, HONG KONG, AND MACAU) (Oct. 26, 2009), *available at* <http://www.state.gov/g/drl/rls/irf/2009/127268.htm#> [hereinafter U.S. DEP'T OF STATE REPORT].

¹² INFORMATION OFFICE OF THE STATE COUNCIL OF THE PEOPLE'S REPUBLIC OF CHINA, NATIONAL HUMAN RIGHTS ACTION PLAN OF CHINA (2009–2010), *available at* http://www.china.org.cn/archive/2009-04/13/content_17595407.htm [hereinafter Action Plan]. The section regarding religious beliefs appears as follows:

II. Guarantee of Civil and Political Rights

(4) Freedom of religious belief

China fully implements the policy of freedom of religious belief, and, in accordance with the law, manages religious affairs and protects citizens' freedom of religious belief.

-The state, in accordance with the law, protects normal religious activities, as well as the lawful rights and interests of religious bodies, venues of religious activities and religious believers.

-The state implements the Regulations on Religious Affairs, improves relevant auxiliary regulations and enacts relevant local laws and regulations to guarantee freedom of religious belief of citizens.

-The state protects its citizens from being compelled to believe in or not believe in any religion, and from any discrimination on the grounds of religious belief, and guarantees the rights and interests of religious believers.

-The state respects ethnic minorities' religious beliefs, and protects their religious cultural heritage. It continues to make necessary investments in the

maintenance and reconstruction of temples, mosques and other religious facilities of important historical and cultural value in ethnic-minority areas.

-The state gives full play to the positive role of religious circles in the promotion of social harmony and socio-economic development. It also encourages and supports religious circles in launching social welfare programs, exploring methods and channels for religions to better serve society and promote the people's well-being.

¹³ See, e.g., John M. Glionna, *China's 'action plan' on human rights met with skepticism*. L.A. TIMES, Nov. 7, 2009, available at <http://articles.latimes.com/2008/nov/07/world/fg-rights7>.

¹⁴ *Promises Unfulfilled: An Assessment of China's National Human Rights Action Plan*. HUMAN RIGHTS WATCH (Jan. 11, 2011), available at <http://www.hrw.org/en/reports/2011/01/11/promises-unfulfilled-0>.

¹⁵ *Id.*

¹⁶ *China rejects Western standards on human rights, Vice FM says*, XINHUA NEWS AGENCY, July 30, 2010, available at <http://english.peopledaily.com.cn/90001/90776/90883/7086326.html> (accessed December 21, 2010).

¹⁷ As I endeavor to analyze China's legal landscape regarding religious freedom and the new addition of its Action Plan, I hope to give a thoughtful, impartial consideration of China's lengthy history and deeply-rooted cultural outlook. I recognize that, as an American myself who has only briefly lived in Beijing, I have preconceived ideas and biases in my approach to Chinese law, religion, and society. I acknowledge this upfront in an attempt to be self-aware of my opinions, instead of heedlessly disapproving of China's Communist policies. Too often has the West dressed China in dichotomy with portrayals of the country as either a competitive international superpower, but an evil domestic police power; an economic superstar, but a humanitarian failure; and a model nation for the developing world, yet a maniac despot in need of punishment and global accountability. The United States is especially guilty of both applauding China for its quick and efficient modernization, yet, at the same time, demonizing China for its human rights abuses, lack of due process, and failure to enforce a rule of law. Instead of viewing China in strict black-and-white, I hope to reveal the shades of gray in between, where cultural nuances can provide helpful explanations and support unidentified solutions. Such a stance of mutual collaboration and agreement seems the best chance for enacting positive humanitarian change in China.

¹⁸ THOMAS HEBERER, *CHINA AND ITS NATIONAL MINORITIES* 102 (1989).

¹⁹ See Eric Kolodner, *Religious Rights in China: A Comparison of International Human Rights Law and Chinese Domestic Legislation*, 12 UCLA PAC. BASIN L.J. 407 (1994).

²⁰ *Id.* at 415.

²¹ *Id.* at 416.

²² *Id.*

²³ *Id.* at 417.

²⁴ C.K. YANG, *RELIGION IN CHINESE SOCIETY: A STUDY OF CONTEMPORARY SOCIAL FUNCTIONS OF RELIGION AND SOME OF THEIR HISTORICAL FACTORS* 180 (1961).

²⁵ Kolodner, *supra* note 19, at 415-417.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Natasha Parassram Concepcion, *Human Rights Violations Against Muslims in the Xinjiang Uighur Autonomous Region of Western China*, 8 NO. 1 HUM. RTS. BRIEF 19 (2000).

³⁰ Kolodner, *supra* note 19, at 417.

³¹ See, e.g., *History of Persecution in China: A Chronology of Protestant Christianity in China*, CHINA AID, <http://chinaaidtemp.29.ncol.ca/qry/page.taf?id=136>, (last visited April 4, 2010) [hereinafter *History of Persecution*]; See, e.g., DAVID AIKMAN, *JESUS IN BEIJING: HOW CHRISTIANITY IS TRANSFORMING CHINA AND CHANGING THE GLOBAL BALANCE OF POWER* 265 (2003).

³² *History of Persecution, supra* note 31.

³³ See, e.g., PAUL A. COHEN, *HISTORY IN THREE KEYS: THE BOXERS AS EVENT, EXPERIENCE, AND MYTH* (1997); See, e.g., *Boxer Rebellion: A Violent Anti-imperialism Movement*, CULTURAL CHINA, <http://history.cultural-china.com/en/34History6705.html> (last visited April 2, 2010).

³⁴ COHEN, *supra* note 33, at 23.

³⁵ *Id.* at 55

³⁶ Kolodner, *supra* note 19, at 418.

³⁷ *Id.*

³⁸ FRANZ MICHAEL, *NON-CHINESE NATIONALITIES AND RELIGIOUS COMMUNITIES*, IN *HUMAN RIGHTS IN THE PEOPLE'S REPUBLIC OF CHINA* 281–82 (Wu Yuan Li ed., 1988).

³⁹ Kolodner, *supra* note 19, at 419.

⁴⁰ *Id.*

⁴¹ *FREEDOM IN RELIGION IN CHINA*, HUMAN RIGHTS WATCH, 2 n.5 (1992).

⁴² Document No. 19, *The Basic Viewpoint and Policy on the Religious Question During our Country's Socialist Period* (1982), reprinted in *FREEDOM OF RELIGION IN CHINA*, ASIA WATCH 48 (1992). This document was considered *neibu* (restriction circulation) but was widely leaked.

⁴³ Kolodner, *supra* note 19, at 425. These associations include the Chinese Buddhist Association, the Chinese Islamic Association, the Chinese Daoist Association, the Three-Self Patriotic Movement (the Protestant organization), and the Chinese Catholic Patriotic Association.

⁴⁴ Document No. 6, *Some Problems Concerning Further Improving Work on Religion*, *Central Committee of the Chinese Communist Party and the State Council* at 39 (1991), reprinted in *FREEDOM OF RELIGION IN CHINA*, ASIA WATCH 32 (1992).

⁴⁵ *Id.* at 5.

⁴⁶ Kolodner, *supra* note 19, at 425.

⁴⁷ See, e.g., Darin W. Carlson, *Understanding Chinese-U.S. Conflict Over Freedom of Religion: The Wolf-Specter Freedom from Religious Persecution Acts of 1997 and 1998*, 1998 B.Y.U. L. REV. 563 at fn. 23 (1998); see also *The House Church Movement*, CHINA AID, <http://www.chinaaid.org/> (last visited April 4, 2010) [hereinafter *The House Church Movement*].

The Three-Self Patriotic Movement (TSPM) took its name from Henry Venn, founder of the Church Missionary Society, who once used the term to describe the society's

policy for building self-reliant indigenous churches. In 1950, however, the “three-self” slogan took on a political connotation that recognized the autonomy of Chinese Christianity aside from any foreign influence, including former “imperialist” connections. The new three “self” Chinese Church stood for “Self-Supporting,” “Self-Governing,” and “Self-Propagating,” and the church’s goal was to submit to the Communist Party.

⁴⁸ Carlson, *supra* note 47, at 569.

⁴⁹ Aikman, *supra* note 31, at 54.

⁵⁰ The House Church Movement, *supra* note 47.

⁵¹ Hong Yujian, *Expert Commentary: The Truth of the Three-Self Patriotic Movement (TSPM): The Rigorous Test on the Churches in China*, CHINA AID (Jan. 30, 2009), http://chinaaidtemp.29.ncol.ca/qry/page.taf?id=135&_function=detail&sbtblct_uid1=134&_nc=82ad1a434f330c071d9ca5a0649d6054 (last visited April 4, 2010).

⁵² *Id.*, see also The House Church Movement, *supra* note 47.

⁵³ Hong Yujian, *supra* note 51.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Kolodner, *supra* note 19, at 418 (quoting *Religious Issues in Socialism Discussed*, Foreign Broadcast Information Service (FBIS), June 2, 1988, CHI 88-106, at 33.).

⁶⁰ *History of Persecution*, *supra* note 31.

⁶¹ Kolodner, *supra* note 19, at 420.

⁶² The House Church Movement, *supra* note 47.

⁶³ See Dorinda Elliot, *The Last Frontier*, TIME, June 27, 2005, at 52.

⁶⁴ *History of Persecution*, *supra* note 31.

⁶⁵ The House Church Movement, *supra* note 47.

⁶⁶ *Id.*

⁶⁷ Christy Cutbill McCormick, *Exporting the First Amendment: America’s Response to Religious Persecution Abroad*, 4 J. INT’L LEGAL STUD. 283, 295 (1998).

⁶⁸ U.S. DEP’T OF STATE REPORT, *supra* note 11.

⁶⁹ See, e.g., *Beijing Olympic Action Plan*, BEIJING ORGANIZING COMMITTEE FOR THE GAMES OF THE XXIX OLYMPIAD, <http://en.beijing2008.com/59/80/column211718059.shtml> (last visited March 6, 2011); *Repentance, Reconciliation and Re-formation: Recommissioned after Twenty Years: June 4, 1989-June 4, 2009*, CHINA AID, <http://www.chinaaid.org/qry/page.taf?id=143> (last visited April 4, 2010).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² INCORPORATING RESPONSIBILITY 2008, <http://www.ir2008.org> (last updated Sept. 9, 2010).

⁷³ Elisabeth Wickeri, Amy Tai & Mary Ellen Payne, *Promises, Promises*. CHINA RTS. FORUM, No.1 2005 109, 111–113, available at <http://www.ir2008.org/article.php?sid=10>. (last visited April 4, 2010).

⁷⁴ *Id.* at 109; see also CHINA RIGHTS FORUM, *2008 and Beyond*, No. 3 (2007), available at http://hrichina.org/public/PDFs/CRF.3.2007/CRF-2007-3__complete.pdf (the issues

contained several articles that explored the relationship between human rights and the Olympics).

⁷⁵ *2008 and Beyond*, *supra* note 74, at 113.

⁷⁶ *Id.* at 114.

⁷⁷ *History of Persecution*, *supra* note 31 (The same year, incidents of Christian persecution in Beijing alone increase by more than 400 percent.).

⁷⁸ *Annual Report of Persecution by the Government on Christian House Churches within Mainland China: January 2007-December 2007*, CHINA AID, (Feb. 2008), http://www.chinaaid.org/downloads/sb_chinaaid/CAA2007AnnualPersecutionReportEnglish.pdf.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Annual Report of Persecution by the Government on Christian House Churches within Mainland China: January 2008-December 2008 (The Year of the Beijing Olympic Games)*, CHINA AID. (Jan. 2009), http://www.chinaaid.org/downloads/sb_chinaaid/FinalENGLISH-2008PersecutionReport.pdf.

⁸² *Id.* at 4.

⁸³ See Patrick Goodenough, *U.N. Leader Skips Opportunity to Reproach China on Human Rights*, CNSNEWS.COM (Oct. 12, 2010), <http://www.cnsnews.com/news/article/un-leader-skips-opportunity-reproach-chi#>.

⁸⁴ See *DuiHua Reduces Estimate of Remaining June Fourth Prisoners*, DUI HUA FOUNDATION (May 12, 2009), http://www.duihua.org/media/press/statements/press_reduces_estimate_6_4_prisoners.htm; see also John Kamm, *China's June Fourth Prisoners: The Long Road to Justice - Remarks to the Foreign Correspondents' Club of Hong Kong for the 12th Annual Human Rights Press Awards*, DUI HUA FOUNDATION (Mar. 29, 2008), http://www.duihua.org/outreach/sa/speeches/speech_FCC-HK20080329.htm (The Dui Hui Foundation estimates that there are somewhere between sixty and one hundred people still imprisoned for offenses committed between April and June 1989, during which the Tiananmen Square massacre was the climax.).

⁸⁵ *Annual Report of Persecution by the Government on Christian House Churches within Mainland China: January 2009-December 2009*, CHINA AID, 7 (2009), http://www.chinaaid.org/downloads/sb_chinaaid/31FinalENGLISH2009PersecutionReport-1.pdf

⁸⁶ Nicholas D. Kristof, *Opinion, Remembering Tiananmen Protests*, N.Y. TIMES (June 4, 2009), http://www.nytimes.com/interactive/2009/06/04/opinion/20090604_TIANANMEN_FEATURE.html.

⁸⁷ *Annual Report of Persecution by the Government on Christian House Churches within Mainland China: January 2009-December 2009*, CHINA AID, 7 (Jan. 2010), http://www.chinaaid.org/downloads/sb_chinaaid/31FinalENGLISH2009PersecutionReport-1.pdf

⁸⁸ *Marbury v. Madison*, 5 U.S. 137, 165–66 (1803).

⁸⁹ *Id.* at 166.

⁹⁰ Philip J. McConaughay, *Rethinking the Role of Law and Contracts in East-West Commercial Relationships*, 41 VA. J. INT'L L. 427, 435 n.36 (2001) (citing JOHN H. BARTON, ET AL., *LAW IN RADICALLY DIFFERENT CULTURES* 9 (1983)).

⁹¹ *Id.* at 435.

⁹² *Id.* at 427.

⁹³ Ling Bin, Professor, PowerPoint presentation at Beida Law School: The Social Backgrounds of the Rule of Law Reform in Today's China (May 18, 2009) at slide 58 (copy on file with author).

⁹⁴ *Id.*

⁹⁵ McConnaughay, *supra* note 90, at 434 (citing Derk Bodde and Clarence Morris, *LAW IN IMPERIAL CHINA* 13 (1967)).

⁹⁶ *Id.* at 458.

⁹⁷ Ling Bin, *supra* note 93, at slides 45–64.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ McConnaughay, *supra* note 90, at 443.

¹⁰¹ Magda Hornemann, *China: Religious Freedom and the Legal System: Continuing Struggle*, Forum 18 News Service (April 28, 2004), available at http://www.forum18.org/Archive.php?article_id=309 (Ye declared this in a speech to the Central Party School in 1996).

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Ling Bin, *supra* note 93, at slides 47–48.

¹⁰⁵ *Id.* at slide 51

¹⁰⁶ *Id.*

¹⁰⁷ See HEBERER, *supra* note 18, at 105; MICHAEL, *supra* note 38.

¹⁰⁸ Kolodner, *supra* note 19 (citing CHRISTIAN JOCHIM, *CHINESE RELIGIONS: A CULTURAL PERSPECTIVE* 6 (Robert S. Ellwood, Jr. ed., 1986)).

¹⁰⁹ McConnaughay, *supra* note 90, at 443.

¹¹⁰ Laura Fitzpatrick, *A Brief History of China's One Child Policy*, TIME, (July 27, 2009) available at <http://www.time.com/time/world/article/0,8599,1912861,00.html>.

¹¹¹ Xin Dingding, *Raise in Mandatory Retirement Age Ruled Out*, CHINA DAILY, (Dec. 22, 2006), available at <http://www.china.org.cn/english/government/193535.htm>.

¹¹² Kolodner, *supra* note 19, at 418.

¹¹³ McConnaughay, *supra* note 90, at 427.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ See *id.* at 429.

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 448.

¹¹⁹ *Id.* at 443–44.

¹²⁰ *Id.* at 449.

¹²¹ *Id.*

¹²² P.R.C. Constitution (1982).

¹²³ *Id.* at Art. 36.

¹²⁴ Magda Hornemann, *China: "Religious Communists" and religious freedom*, FORUM 18 NEWS SERVICE (Feb. 13, 2007) available at http://www.forum18.org/Archive.php?article_id=910.

¹²⁵ Kolodner, *supra* note 19 (citing Freedom in Religion in China, ASIA WATCH 2 n. 5 (1992)).

¹²⁶ *Id.*

¹²⁷ Kolodner, *supra* note 19, at 422.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ P.R.C. Constitution, *supra* note 123, at Art. 51.

¹³¹ *Id.* at Art. 52–54.

¹³² Ann Kent, *Waiting for Rights: China's Human Rights and China's Constitution: 1949-1989*, 13 HUM RTS. Q. 170, 180–81 (1991).

¹³³ *Id.*

¹³⁴ Kolodner, *supra* note 19, at 421–22.

¹³⁵ P.R.C. Constitution, *supra* note 123, at Art.36.

¹³⁶ U.S. DEP'T OF STATE REPORT, *supra* note 11.

¹³⁷ *Id.*

¹³⁸ Matthew 28: 19–20.

¹³⁹ Kent, *supra* note 132, at 177.

¹⁴⁰ LOUIS HENKIN, THE HUMAN RIGHTS IDEA IN CONTEMPORARY CHINA: A COMPARATIVE PERSPECTIVE, IN HUMAN RIGHTS IN CONTEMPORARY CHINA 27 (1986).

¹⁴¹ *Id.* at 32.

¹⁴² The International Covenant on Economic, Social and Cultural Rights (Mar. 17, 2001), the Convention on the Elimination of All Forms of Discrimination against Women (Nov. 4, 1980), the United Nations Convention Against Transnational Organized Crime (Sept. 23, 2003), the Slavery Convention of 1926 (April 22, 1927), the Convention Against Torture and Other Cruel, Inhumane, or Degrading Treatment or Punishment (Oct. 4, 1988), and the Convention on the Rights of a Child (Mar. 2, 1992). *Ratification of International Human Rights Treaties—China*, University of Minnesota Human Rights Library, available at <http://www1.umn.edu/humanrts/research/ratification-china.html> (last visited Mar. 4, 2010).

¹⁴³ *See id.*

¹⁴⁴ The other documents within the “International Bill of Rights”—the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols—followed soon after. Fact Sheet No.2 (Rev.1), The International Bill of Human Rights, <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf> (last visited Mar. 6, 2011).

¹⁴⁵ *Id.*

¹⁴⁶ Universal Declaration of Human Rights, Article 18. G.A. Res. 217A U.N. GAOR, 3rd Sess., pt. 1, at 71, UN Doc A/810 (1948).

¹⁴⁷ *Id.* at Art. 29.

¹⁴⁸ Kolodner, *supra* note 19, at 412.

¹⁴⁹ *Id.*

¹⁵⁰ *See* U.S. DEP'T OF STATE REPORT, *supra* note 11; *see also* Concepcion, *supra* note 29. During the HRC Committee's reporting period, the government's repression of religious freedom also remained severe in the Tibetan Autonomous Region, as well as in the Xinjiang Uighur Autonomous Region.

¹⁵¹ *See* U.S. DEP'T OF STATE REPORT, *supra* note 11.

¹⁵² *Id.*

- ¹⁵³ General Assembly Resolution 2200 A (XXI). International Covenant on Civil and Political Rights (ICCPR), G.A. Res. 2200A, U.N. GAOR 21st Sess., Supp. No. 16, U.N. Doc A/6136 (1966), available at <http://www2.ohchr.org/english/law/ccpr.htm> (last visited Mar. 6, 2011). See also, Fact Sheet No.2 (Rev.1), The International Bill of Human Rights, available at <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1.en.pdf> (last visited Mar. 6, 2011).
- ¹⁵⁴ Fact Sheet No.2 (Rev.1), *supra* note 153.
- ¹⁵⁵ *Id.*
- ¹⁵⁶ Concepcion, *supra* note 29.
- ¹⁵⁷ *Id.*
- ¹⁵⁸ Kolodner, *supra* note 19, at 412 (citing the ICCPR).
- ¹⁵⁹ ICCPR, *supra* note 153, at Art. 27.
- ¹⁶⁰ Kolodner, *supra* note 19, at 413.
- ¹⁶¹ Jerome A. Cohen, *Congressional-Executive Commission on China Human Rights and the Rule of Law in China*, 2 CHINESE L. & POL'Y REV. 99. (2007); see also Cohen's speech, Room 138, Dirksen Senate Office Building. (Sept. 20, 2006).
- ¹⁶² *Id.*
- ¹⁶³ *Id.*
- ¹⁶⁴ Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (DEIDRB), Art. 5 (Mar. 5, 1978) E/CN.4/RES/22 (XXXIV).
- ¹⁶⁵ *Id.*
- ¹⁶⁶ Kolodner, *supra* note 19, at 414.
- ¹⁶⁷ *Id.*
- ¹⁶⁸ United Nations Treaty Collection, Chapter IV: Human Rights, available at <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>, last accessed March 24, 2011.
- ¹⁶⁹ Action Plan, *supra* note 12.
- ¹⁷⁰ See U.S. DEP'T OF STATE REPORT, *supra* note 11.
- ¹⁷¹ Yuan Ye, *China publishes national human rights action plan*, CHINAVIEW.CN, available at http://news.xinhuanet.com/english/2009-04/13/content_11177311.htm.
- ¹⁷² Action Plan, *supra* note 12.
- ¹⁷³ *Id.*
- ¹⁷⁴ Keith Brasher, *China Releases Human Rights Plan*, N.Y.TIMES (Apr. 13, 2000) available at <http://www.nytimes.com/2009/04/14/world/asia/14china.html>.
- ¹⁷⁵ Action Plan, *supra* note 12.
- ¹⁷⁶ See U.S. DEP'T OF STATE REPORT, *supra* note 11; see also Concepcion, *supra* note 29.
- ¹⁷⁷ See U.S. DEP'T OF STATE REPORT, *supra* note 11.
- ¹⁷⁸ Calum MacLeod, *China debuts 2-year human rights action plan*, USA TODAY (Apr. 13, 2009) available at http://www.usatoday.com/news/world/2009-04-13chinarights_N.htm.
- ¹⁷⁹ Kolodner, *supra* note 19.
- ¹⁸⁰ McConnaughay, *supra* note 90.
- ¹⁸¹ *Promises Unfulfilled*, *supra* 14, at 8.
- ¹⁸² Glionna, *supra* note 13.
- ¹⁸³ See Hutzler, *supra* note 7.

¹⁸⁴ Elliott, *supra* note 63.

¹⁸⁵ Glionna, *supra* note 13, at 2.

¹⁸⁶ *Id.*

¹⁸⁷ *Promises Unfulfilled*, *supra* 14, at 8.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ MacLeod, *supra* note 178.

¹⁹¹ *Promises Unfulfilled*, *supra* 14, at n.9. Those government ministries, agencies, and government-organized nongovernmental organizations include the Information Office of the State Council and Ministry of Foreign Affairs, the Legislative Affairs Committee of the Standing Committee of the National People's Congress, Committee for Social and Legal Affairs of the Chinese People's Political Consultative Conference National Committee, Supreme People's Court, Supreme People's Procuratorate, National Development and Reform Commission, Ministry of Education, State Ethnic Affairs Commission, Ministry of Civil Affairs, Ministry of Justice, Ministry of Human Resources and Social Security, Ministry of Health, China Disabled Persons' Federation, and China Society for Human Rights Studies, Nankai University, Shanghai Academy of Social Sciences, Shandong University, China University of Political Science and Law, Chinese Academy of Social Sciences, Beijing University, Wuhan University, Renmin University of China, and the Central Party School. The NHRAP states that several symposia on the drafting of the plan were convened with representation from over twenty organizations, such as China Law Society, All-China Lawyers' Association, China Legal Aid Foundation, China Environmental Protection Foundation, Chinese Society of Education, China Women's Development Foundation, China Foundation for Poverty Alleviation, China Foundation for Disabled Persons, and China Foundation for Human Rights Development.

¹⁹² Glionna, *supra* note 13.

¹⁹³ *Id.*

¹⁹⁴ COHEN, *supra* note 33, at 105.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ Teng Biao and Hu Jia, *The Real Situation in Pre-Olympics China* (奥运前的中国真), *China Rights Forum*, No.4, 87 (2007) available at http://www.hrichina.org/public/PDFs/CRF.4.2007/CRF-2007-4_Situation.pdf.

¹⁹⁸ Cohen, *supra* note 161.

¹⁹⁹ *Id.*

²⁰⁰ Kolodner, *supra* note 19, at 408.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ See, e.g., Amy J. McMaster, *Human Rights at the Crossroads: When East Meets West*, 29 VT. L. REV. 109, 127 (2004); Melanne Andromedea Civic, *A Comparative Analysis of International and Chinese Human Rights Law—Universality Versus Cultural Relativism*, 2 BUFF. J. INT'L L. 285, 288 (1995); Jack Donnelly, *Cultural Relativism and Universal Human Rights*, 6 HUM. RTS. Q. 400 (1984) (exploring the relationship between universal

human rights and cultural relativism); and DONNELLY, INTERNATIONAL HUMAN RIGHTS 34–35 (1993).

²⁰⁴ McCormick, *supra* note 64.

²⁰⁵ *Id.* at 28.

²⁰⁶ Martin Luther King Jr., Letter from Birmingham Jail, April 16, 1963.

²⁰⁷ *Id.*

²⁰⁸ Press Release, Congressman J. Randy Forbes, *Congressional China Caucus Formed On Capitol Hill* (June 14, 2005), available at <http://www.house.gov/forbes>.

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ Congressional letter from Frank R. Wolf and Christ Smith, Members of Congress, to Ambassador Jon Huntsman, c/o Dep't. of State (Sept. 8, 2009), available at http://www.chinaaid.org/downloads/sb_chinaaid/CongressmenLetteronShouwang.pdf; see also *Q and A with Ambassador Huntsman*, THE NEW YORKER (Dec 29, 2009), <http://www.newyorker.com/online/blogs/evanosnos/2009/12/q-and-a-ambassador-jon-huntsman.html>.

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ Elliott, *supra* note 63, at 53; RANDALL PEERENBOOM, CHINA MODERNIZES: THREAT TO THE WEST OR MODEL FOR THE REST? (2007).

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ Elliott, *supra* note 64, at 53.

²²¹ Lousia Lim, *In China, Blogs Are Revolutionary Tool of Opinion*, NPR (Mar. 7, 2006), <http://www.npr.org/templates/story/story.php?storyId=5250144>

²²² 2008 Annual Report of Persecution, *supra* note 81, at 3.

²²³ *Id.*

²²⁴ *Id.*

²²⁵ Beth Simmons, *Civil Rights in International Law: Compliance with Aspect of the International Bill of Rights*, 16 IND. J. GLOBAL LEGAL STUDIES 437 (2009).

²²⁶ See generally Peerenboom, *supra* note 215.

²²⁷ McConaughay, *supra* note 90, at 432.

²²⁸ *Id.* at 433.